

**Supplemental Letter of Findings Number: 02-20181391
Income Tax
For Tax Years 2013-15**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Supplemental Letter of Findings.

HOLDING

In the previous Letter of Findings, Retail Business established that the Department's calculations of sales tax which should have been collected were partially incorrect and thus the income tax assessment should also reflect this change. However, in the supplemental decision, Taxpayer did not provide sufficient evidence that any further adjustments should be made to the base tax. Retail Business did provide sufficient evidence to have the penalty abated.

ISSUES

I. Income Tax–Taxable Income.

Authority: IC § 6-8.1-5-1; IC § 6-3-2-2; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests proposed assessments for additional income tax.

II. Tax Administration–Penalties.

Authority: IC § 6-8.1-5-4; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of penalties.

STATEMENT OF FACTS

Taxpayer is a retail business with gasoline sales and an attached convenience store. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had underreported taxable sales for the tax years 2013 through 2015. The Department therefore issued proposed assessments for sales tax, penalties, and interest for those years. Taxpayer protested a portion of the assessments. An administrative hearing was held and Letter of Findings, 02-20181391 (February 15, 2019), 20190424 Ind. Reg. 045190223NRA ("LOF") resulted, finding that the Department was correct in using the best information available to determine Taxpayer's total and taxable sales for the tax years at issue. In addition, the LOF determined that Taxpayer was able to provide additional documentation and analysis to support its position that its cigarette sales were at a lower markup than that initially calculated by the Department. Taxpayer requested a rehearing for the denied portion of the LOF and an administrative hearing was held. Further facts will be supplied as needed.

I. Income Tax - Additional Taxable Income.

DISCUSSION

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a

statute that an agency is 'charged with enforcing. . .[courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

Indiana income tax is established under IC § 6-3-2-2(a), which states:

With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

- (1) income from real or tangible personal property located in this state;
- (2) *income from doing business in this state*;
- (3) income from a trade or profession conducted in this state;
- (4) compensation for labor or services rendered within this state; and
- (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property to the extent that the income is apportioned to Indiana under this section or if the income is allocated to Indiana or considered to be derived from sources within Indiana under this section.

Income from a pass-through entity shall be characterized in a manner consistent with the income's characterization for federal income tax purposes and shall be considered Indiana source income as if the person, corporation, or pass-through entity that received the income had directly engaged in the income producing activity. Income that is derived from one (1) pass through entity and is considered to pass through to another pass-through entity does not change these characteristics or attribution provisions. In the case of nonbusiness income described in subsection (g), only so much of such income as is allocated to this state under the provisions of subsections (h) through (k) shall be deemed to be derived from sources within Indiana. In the case of business income, only so much of such income as is apportioned to this state under the provision of subsection (b) shall be deemed to be derived from sources within the state of Indiana. In the case of compensation of a team member (as defined in section 2.7 of this chapter), only the portion of income determined to be Indiana income under section 2.7 of this chapter is considered derived from sources within Indiana. In the case of a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code, only so much of the income as is apportioned to Indiana under subsection (r) is considered derived from sources within Indiana.

(Emphasis added).

In this case, Taxpayer was doing business in Indiana and so was subject to adjusted gross income tax as provided by IC § 6-3-2-2(a). The Department's calculations of additional sales at the retail location resulted in the determination that Taxpayer also had additional income from those sales.

In the course of its rehearing protest of additional sales at the retail location, Taxpayer was unable to provide sufficient documentation to establish that a portion of the Department's calculations of additional income were overstated. The original LOF ruling still stands and no adjustments will be made on the rehearing. Taxpayer did not meet its burden as required by IC § 6-8.1-5-1(c) and the rehearing requested protest is denied.

FINDING

Taxpayer's protest is denied.

II. Tax Administration—Penalties.

DISCUSSION

Taxpayer protests the imposition of penalties pursuant to IC § 6-8.1-10-2.1. Penalty waiver is permitted if a taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. [45 IAC 15-11-2\(b\)](#) clarifies the standard for the imposition of the negligence penalty as follows:

"Negligence", on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case-by-case basis according to the facts and

circumstances of each taxpayer.

The standard for waiving the negligence penalty is given at [45 IAC 15-11-2\(c\)](#) as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer protests the Department's assessment of penalties. After review of the documentation and analysis provided in the protest process, the Department agrees that waiver of penalties is warranted. Taxpayer provided sufficient explanation and it has a good history of tax compliance. Therefore, waiver of penalties is warranted under [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayer's protest to the imposition of penalties is sustained.

SUMMARY

Taxpayer's Issue I protest regarding the imposition of adjusted gross income tax is denied. Taxpayer's Issue II protest regarding the imposition of penalties is sustained.

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